

Assembly Bill No. 1353

CHAPTER 597

An act to add Section 25150.8 to, and to add and repeal Section 25150.7 of, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 20, 2004. Filed
with Secretary of State September 20, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1353, Matthews. Treated wood waste: disposal.

(1) Existing law regulates the control of hazardous waste, but exempts from the hazardous waste control laws, wood waste that is exempt from regulation under the federal Resource Conservation and Recovery Act of 1976, as amended (RCRA), if the wood waste is disposed of in a municipal landfill that meets certain requirements imposed pursuant to the Porter-Cologne Water Quality Control Act for the classification of disposal sites, and the landfill meets other specified requirements. A violation of the state's hazardous waste control laws, including a regulation adopted pursuant to those laws, is a crime.

This bill would define the term "treated wood" and would require treated wood waste, as defined, to be disposed of in either a class I hazardous waste landfill or in a composite-lined portion of a solid waste landfill unit that meets specified requirements. The bill would require any solid waste landfill accepting treated wood waste to meet certain requirements specified in the bill and to manage the treated wood waste in a specified manner. The bill would provide that if treated wood waste is accepted by a solid waste landfill that manages and disposes of the treated wood waste in a specified manner, the treated wood waste shall be deemed to be a solid waste, and not a hazardous waste.

The bill would, until January 1, 2007, exempt treated wood waste from the hazardous waste control laws, if specified requirements are met.

The bill would require each wholesaler and retailer in this state to conspicuously post information describing the health hazards associated with treated wood waste and how to safely manage, handle, and dispose of treated wood waste. The bill would require the wood preserving industry, by July 1, 2005, to make specified information available to generators of treated wood waste. The bill would require the Department of Toxic Substances Control to adopt, by January 1, 2007, regulations establishing management standards for treated wood waste as an

alternative to the requirements specified in the hazardous waste control laws.

The bill would require a person subject to the hazardous waste control laws to comply with the alternative standard specified in the regulations adopted by the department or with the requirements of the hazardous waste control laws.

The bill would provide that on January 1, 2005, all variances granted by the department before January 1, 2005, governing the management of treated wood waste are inoperative and have no further effect.

The bill would require the department, by June 1, 2011, to prepare and post on its Web site, a report that makes a determination regarding the successful compliance with, and implementation of, the requirements imposed by the bill. The bill would make the requirements imposed by the bill inoperative on June 1, 2012, and, would repeal them on January 1, 2013, unless a later enacted statute that is enacted before January 1, 2013, deletes or extends the dates on which it becomes inoperative and is repealed, except for the exemption of treated wood waste from the hazardous waste control laws, if it is disposed of at a solid waste landfill.

Since a violation of the regulations adopted by the department would be a crime, the bill would impose a state-mandated local program.

(2) The bill would require the Senate Office of Research to review and make findings regarding treated wood products by June 1, 2006.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 25150.7 is added to the Health and Safety Code, to read:

25150.7. (a) The Legislature finds and declares that this section is intended to address the unique circumstances associated with the generation and management of treated wood waste. The Legislature further declares that this section shall not be construed as setting a precedent applicable to the management, including disposal, of other hazardous wastes.

(b) For purposes of this section, the following definitions shall apply:

(1) "Treated wood" means wood that has been treated with a chemical preservative for purposes of protecting the wood against attacks from insects, microorganisms, fungi, and other environmental

conditions that can lead to decay of the wood and the chemical preservative is registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 and following).

(2) "Wood preserving industry" means business concerns, other than retailers, that manufacture or sell treated wood products in the state.

(c) This section applies only to treated wood waste that is a hazardous waste, solely due to the presence of a preservative in the wood, and to which both of the following requirements apply:

(1) The treated wood waste is not subject to regulation as a hazardous waste under the federal act.

(2) Section 25143.1.5 does not apply to the treated wood waste.

(d) (1) Notwithstanding Sections 25157.8, 25189.5, and 25201, treated wood waste shall be disposed of in either a class I hazardous waste landfill, or in a composite-lined portion of a solid waste landfill unit that meets all requirements applicable to disposal of municipal solid waste in California after October 9, 1993, and that is regulated by waste discharge requirements issued pursuant to Division 7 (commencing with Section 13000) of the Water Code for discharges of designated waste, as defined in Section 13173 of the Water Code, or treated wood waste.

(2) A solid waste landfill that accepts treated wood waste shall comply with all of the following requirements:

(A) Manage the treated wood waste so as to prevent scavenging.

(B) Ensure that any management of the treated wood waste at the solid waste landfill prior to disposal, or in lieu of disposal, complies with the applicable requirements of this chapter, except as otherwise provided pursuant to subdivision (e) or regulations adopted pursuant to subdivision (g).

(C) If monitoring at the composite-lined portion of a landfill unit at which treated wood waste has been disposed of indicates a verified release, then treated wood waste shall no longer be discharged to that landfill unit until corrective action results in cessation of the release.

(e) (1) Treated wood waste is exempt from the requirements of this chapter if all of the following requirements are met:

(A) The treated wood waste is managed so as to prevent scavenging.

(B) The treated wood waste is not disposed of, except as allowed pursuant to subdivision (d).

(C) The treated wood waste is not burned, recycled, reclaimed, or reused, except in accordance with the applicable requirements of this chapter and the regulations adopted pursuant to this chapter.

(D) On and after July 1, 2005, the treated wood waste is not stored for more than 90 days and, when stored, is protected from run-on and run-off, and placed on a surface sufficiently impervious to prevent, to the extent practical, contact with and any leaching to soil or water.

(E) The treated wood waste is not mixed with other wood waste prior to disposal.

(F) The treated wood waste is handled in a manner consistent with all applicable requirements of the California Occupational Safety and Health Act of 1973 (Chapter 1 (commencing with Section 6300) of Part 1 of Division 5 of the Labor Code), including all rules, regulations, and orders relating to hazardous waste.

(2) The exemption provided by this subdivision shall remain in effect until January 1, 2007, and as of that date is inoperative.

(f) (1) Each wholesaler and retailer of treated wood and treated wood-like products in this state shall conspicuously post information at or near the point of display or customer selection of treated wood and treated wood-like products used for fencing, decking, retaining walls, landscaping, outdoor structures, and similar uses. The information shall be provided to wholesalers and retailers by the wood preserving industry in 22-point font, or larger, and contain the following message:

Warning - Potential Danger

These products are treated with wood preservatives registered with the United States Environmental Protection Agency and the California Department of Pesticide Regulation and should only be used in compliance with the product labels.

This wood may contain chemicals classified by the State of California as hazardous and should be handled and disposed of with care. Check product label for specific preservative information and Proposition 65 warnings concerning presence of chemicals known to the State of California to cause cancer or birth defects.

Anyone working with treated wood, and anyone removing old treated wood, needs to take precautions to minimize exposure to themselves, children, pets, or wildlife, including:

- ☐ Avoid contact with skin. Wear gloves and long sleeved shirts when working with treated wood. Wash exposed areas thoroughly with mild soap and water after working with treated wood.
- ☐ Wear a dust mask when machining any wood to reduce the inhalation of wood dusts. Avoid frequent or prolonged inhalation of sawdust from treated wood. Machining operations should be performed outdoors whenever possible to avoid indoor accumulations of airborne sawdust.
- ☐ Wear appropriate eye protection to reduce the potential for eye injury from wood particles and flying debris during machining.
- ☐ If preservative or sawdust accumulates on clothes, launder before reuse. Wash work clothes separately from other household clothing.
- ☐ Promptly clean up and remove all sawdust and scraps and dispose of appropriately.

- ☐ Do not use treated wood under circumstances where the preservative may become a component of food or animal feed.
- ☐ Only use treated wood that's visibly clean and free from surface residue for patios, decks, or walkways.
- ☐ Do not use treated wood where it may come in direct or indirect contact with public drinking water, except for uses involving incidental contact such as docks and bridges.
- ☐ Do not use treated wood for mulch.
- ☐ Do not burn treated wood. Preserved wood should not be burned in open fires, stoves, or fireplaces.

For further information, go to (Web site) or call (toll free number).

In addition to the above listed precautions, treated wood waste shall be managed in compliance with applicable hazardous waste control laws.

(2) On or before July 1, 2005, the wood preserving industry shall, jointly and in consultation with the department, make information available to generators of treated wood waste, including fencing, decking and landscape contractors, solid waste landfills, and transporters, that describes how to best handle, dispose of, and otherwise manage treated wood waste, through the use either of a toll-free telephone number, Internet Web site, information labeled on the treated wood, information accompanying the sale of the treated wood, or by mailing if the department determines that mailing is feasible and other methods of communication would not be as effective. A treated wood manufacturer or supplier to a wholesaler or retailer shall also provide the information with each shipment of treated wood products to a wholesaler or retailer, and the wood preserving industry shall provide it to fencing, decking, and landscaping contractors, by mail, using the Contractor's State Licensing Board's available listings, and license application packages. The department may provide guidance to the wood preserving industry, to the extent resources permit.

(g) (1) On or before January 1, 2007, the department, in consultation with the California Integrated Waste Management Board, the State Water Resources Control Board, and the Office of Environmental Health Hazard Assessment, and after consideration of any known health hazards associated with treated wood waste, shall adopt and may subsequently revise as necessary, regulations establishing management standards for treated wood waste as an alternative to the requirements specified in this chapter and the regulations adopted pursuant to this chapter.

(2) The regulations adopted pursuant to this subdivision shall, at a minimum, ensure all of the following:

(A) Treated wood waste is properly stored, treated, transported, tracked, disposed of, and otherwise managed so as to prevent, to the extent practical, releases of hazardous constituents to the environment, prevent scavenging, and prevent harmful exposure of people, including workers and children, aquatic life, and animals to hazardous chemical constituents of the treated wood waste.

(B) Treated wood waste is not reused, with or without treatment, except for a purpose that is consistent with the approved use of the preservative with which the wood has been treated. For purposes of this subparagraph, "approved uses" means a use approved at the time the treated wood waste is reused.

(C) Treated wood waste is managed in accordance with all applicable laws.

(D) Any size reduction of treated wood waste is conducted in a manner that prevents the uncontrolled release of hazardous constituents to the environment, and that conforms to applicable worker health and safety requirements.

(E) All sawdust and other particles generated during size reduction are captured and managed as treated wood waste.

(F) All employees involved in the acceptance, storage, transport, and other management of treated wood waste are trained in the safe and legal management of treated wood waste, including, but not limited to, procedures for identifying and segregating treated wood waste.

(3) This subdivision does not authorize the department to adopt a regulation that does one or more of the following:

(A) Imposes a requirement as an addition to, rather than as an alternative to, one or more of the requirements of this chapter.

(B) Supersedes subdivision (d) concerning the disposal of treated wood waste.

(C) Supersedes any other provision of this chapter that provides a conditional or unconditional exclusion, exemption, or exception to a requirement of this chapter or the regulations adopted pursuant to this chapter, except the department may adopt a regulation pursuant to this subdivision that provides an alternative condition for a requirement specified in this chapter for an exclusion, exemption, or exception and that allows an affected person to choose between complying with the requirements specified in this chapter or complying with the alternative conditions set forth in the regulation.

(h) (1) A person managing treated wood waste who is subject to a requirement of this chapter, including a regulation adopted pursuant to this chapter, shall comply with either the alternative standard specified in the regulations adopted pursuant to subdivision (g) or with the requirements of this chapter.

(2) A person who is in compliance with the alternative standard specified in the regulations adopted pursuant to subdivision (g) is deemed to be in compliance with the requirement of this chapter for which the regulation is identified as being an alternative, and the department and any other entity authorized to enforce this chapter shall consider that person to be in compliance with that requirement of this chapter.

(i) On January 1, 2005, all variances granted by the department before January 1, 2005, governing the management of treated wood waste are inoperative and have no further effect.

(j) Nothing in this section may be construed to limit the authority or responsibility of the department to adopt regulations under any other provision of law.

(k) On or before June 1, 2011, the department shall prepare and post on its Web site a report that makes a determination regarding the successful compliance with, and implementation of, this section.

(l) (1) This section shall become inoperative on June 1, 2012, and, as of January 1, 2013 is repealed, unless a later enacted statute that becomes operative on or before January 1, 2013, deletes or extends the dates on which it becomes inoperative and is repealed.

(2) Notwithstanding paragraph (1), any regulations adopted pursuant to this section on or before June 1, 2012 shall continue in force and effect after that date, until repealed or revised by the department.

SEC. 2. Section 25150.8 is added to the Health and Safety Code, to read:

25150.8. If treated wood waste is accepted by a solid waste landfill that manages and disposes of the treated wood waste in accordance with Section 25143.1.5 or paragraphs (1) and (2) of subdivision (d) of Section 25150.7, the treated wood waste, upon acceptance by the solid waste landfill, shall thereafter be deemed to be a solid waste, and not a hazardous waste, for purposes of this chapter and Section 40191 of the Public Resources Code.

SEC. 3. On or before June 1, 2006, the Senate Office of Research, in consultation with appropriate agencies, shall review and make findings regarding policy options concerning treated wood products.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or

changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

